United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLEES AND APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the
District of Columbia Circuit

FILED MAR 15 1958

Joseph W. Stewart
CLERK

No. 14,183 970

JOSEPH L. DE LEVAY and
MADELEINE M. DE LEVAY,

Appellants

v.

HORACE S. ISBELL and
MAY D. ISBELL,

Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HORACE S. ISBELL
MAY D. ISBELL
4704 Blagden Avenue, N. W.
Washington 11, D. C.
Appellees, pro se.

Washington, D. C. ROBERT I. THIEL EX 3-0625
Printer

STATEMENT OF QUESTIONS PRESENTED

In the opinion of the appellees the questions are:

1. Whether an informal agreement for purchase and sale of real estate which included an agreement by appellees to finance the unpaid balance of purchase money by means of a deed of trust and a provision that a formal contract was to be signed as soon as possible, was breached by appellants when they refused to give appellees a deed of trust and demanded that the unpaid balance be covered by a mortgage.

2. Whether an informal agreement for the purchase and sale of real estate is ambiguous and no contract when the informal agreement contains a provision that a formal contract is to be signed as soon as possible, and this condition could not be realized because the appellants and appellees could not agree on what the terms and conditions of a formal contract should be.

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UNITED STATES COURT OF APPEALS

For The District Of Columbia Circuit

No. 14,183

JOSEPH L. DE LEVAY and
MADELEINE M. DE LEVAY,

Appellants,

v.

HORACE S. ISBELL and
MAY D. ISBELL,

Appellees.

APPEAL FROM THE UNITED SATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEES

COUNTER-STATEMENT OF CASE

On August 19, 1947, the appellants agreed orally to purchase from appellees certain real estate in Virginia and appellees accepted a $100 deposit from appellants with the definite understanding between the parties that a formal contract would be prepared by appellees' attorney and signed as soon as possible. Appellees gave appellants a receipt (Appellees' App. 1) for the $100 deposit, and later two informal notes (Appellees' App. 2, 3) were signed by one of the appellees. No paper of any sort was signed by appellants. The receipt described the property generally but not precisely. It included two provisions: (1) that a formal contract was to be signed as soon as possible, and (2) that sellers would hold a first deed of trust for the unpaid balance of the purchase money. The appellees who wrote the receipt and the appellants who made the deposit clearly understood these provisions and agreed thereto. The circumstances that led to the disagreement

were clearly stated by the trial Judge (Appellant's App. 4) as follows:

> "The basic agreement provided that a formal contract was to be signed as soon as possible. Plaintiffs testified to this fact and that execution of the formal contract was to await the return of Mr. Quimby, attorney for defendants, who was out of the city. Upon Mr. Quimby's return, a draft of formal contract was prepared by him and transmitted to plaintiffs, who refused to sign it although it conformed with the basic requirements of plaintiffs' Exhibit 1. In refusing to sign, plaintiffs objected to the provision for a first deed of trust on the property in the amount of $9,300, with interest at 4%, and sought to have the unpaid balance covered by a mortgage, contrary to the agreement in plaintiffs' Exhibit 1. Plaintiffs then prepared and submitted to defendants a formal contract which varied the informal agreement of the parties in substantial particulars, not only providing for a mortgage in lieu of a deed of trust, costs of the mortgage to be paid by the vendors, but modifying the provisions with reference to subdivision and cutting of timber. This was rejected by the defendants as not in conformity with the informal agreement."

The trial Judge's statement was based on the testimony of the appellants. It is supported by plaintiffs' Exhibits 1 to 7 and 9 (Appellees' App. 1 to 10). After appellants had rejected appellees' draft of a formal contract (Pls.' Exhibit 9, Appellees' App. 10) by their letter of August 30, 1947, (Pls.' Exhibit 6, Appellees' App. 6) and had proposed a draft of formal contract (Pls.' Exhibit 7), it was apparent to appellees that there was no meeting of minds and appellees instructed their attorney to return the $100 deposit to appellants. On September 9, 1947, appellees' attorney sent appellants his check for $100. Appellants refused to accept the check. Subsequently, on April 10, 1948, appellees sold the property to E. O. Pates and Nettie B. Pates for $10,500. On September 9, 1950, appellants brought suit against appellees for $15,700 damages, with interest and costs.

In their complaint (Appellants' App. 1) appellants allege:

> "That on August 19, 1947 a written agreement was entered into by defendant vendors and plaintiff vendees

> for the purchase of certain farm property described as follows: 'a tract of land in Chancellor District, Spotsylvania County, Virginia, containing four hundred-seventy three (473) acres, more or less, owned by vendors, which land is sometimes known as "Todd's Tavern" Tract or Finchville, being the same tract of land conveyed to the vendors by deed from Alice Finlay Coles; and other certain tract and parcel of land being in said Spotsylvania County, Virginia, and containing twenty-one and three quarters (21 3/4) acres more or less, being a portion of the Catherine furnace tract, lying on the west side of the Brook Road, corner to the Finchwille Tract, and being the same land which the vendors obtained by deed from P. B. Willis and J. M. Willis, Trustees.'
>
> "That, the sum of $11,800.00 was agreed upon as the purchase price, $2,500.00 in cash to be paid at settlement, and first trust of $9,300.00 to be taken back by defendant vendors. Plaintiffs paid defendants the sum of $100.00 as part payment on the day the writing hereinbefore mentioned was made.
>
> "That on numerous occasions plaintiffs were ready, willing and able to settle for the property and have constantly sought to settle for the property without cooperation from defendants. Plaintiffs are informed that defendants sold said property to another purchaser for a more favorable financial arrangement, ignoring the agreement still outstanding with plaintiffs."

The description of the property in the complaint is represented as a direct quotation from an alleged "written agreement" entered into by defendant "vendors" and plaintiff "vendees." The quoted description is not found in any paper signed by appellees and the terms "vendors" and "vendees" do not appear in plaintiffs' Exhibits 1, 2, 3, 4 or 5.

To prepare an answer to the complaint, appellees' attorney needed to know the basis for the alleged contract made with appellants and from which appellants' complaint quoted. Appellants had in their possession the only copy of the receipt and the only copies of the notes dated August 19, 1947. Appellees sought in vain to obtain a deposition from appellants to clarify the matter. After much controversy the attorney for appellees finally filed appellees' answer, without having had any

depositions taken, to ascertain whether the quotation in the complaint was fraudulent. At the pretrial proceedings (Appellants' App. 3A), appellants stipulated with counsel for appellees that the five separate papers now designated plaintiffs' Exhibits 1 to 5 (Appellees' App. 1 to 4), constitute the contract upon which appellants rely in this action. The quotation given in the complaint is not in any of these papers. Apparently the precise description of the property was taken from the draft of a formal contract prepared by appellees' attorney (Pls.' Exhibit 9, Appellees' App. 10). This draft of formal contract was rejected in writing by appellants on August 30, 1947 (Appellees' App. 6), and was not executed by any party. Insertion of this precise description of the property in appellants' complaint as a direct quotation set up a fraudulent impression of the agreement of August 19, 1947.

Appellants claimed in their pretrial statement (Record on Appeal, page 12) that:

> "On August 19, 1947 plaintiffs made a written contract with defendants . . ." and that "Plaintiffs and defendants reached full agreement on every conditions of the sale. The property was distinctly described, price, terms, times of performances even future possible subdivision or sale of timber were fully and in details discussed, agreed and reduced to writings subscribed and signed by both defendants. The 'formal' contract was intended to be only a more decorative, a more dressed up memorandum, but not a condition precedent to the existence of the contractual rights."

In contradiction to the statements made by appellants in their "complaint for damages" and in their pretrial statement, examination of appellants' Exhibits 1 to 7 and 9 (Appellees' App. 1 to 10) reveals the following facts:

(1) That appellants did not sign any paper acceptable to appellees at any time. Hence the claim that appellants made a written contract with appellees is false.

(2) That in August 1947 appellees and appellants could not agree

on what the terms and conditions of a formal contract should be. This fact is clearly established by Exhibits 6, 7 and 9.

(3) That the property was not distinctly described in the alleged written agreement of August 19, 1947. The description quoted in the "complaint for damages" is not found in the papers appellants stipulated at the pretrial hearing comprise their contract (Exhibits 1 to 5). It appears that the description was taken from appellees' draft of a formal contract (Appellees' App. 10) prepared by appellees' attorney. This draft was rejected by appellants in writing on August 30, 1947 (Pls.' Exhibit 6, Appellees' App. 6). The five papers appellants stipulated constitute the contract on which they rely do not even mention a substantial part of the property, namely 21-3/4 acres from the "Catherine furnace tract."

(4) That the five papers constituting appellants alleged contract do not specify every condition of a sale. They do not specify "times of performance", a date of settlement, a date of possession, or even the type of deed or title.

(5) That the receipt dated August 19, 1947, for the appellants' deposit was the only paper "signed by both defendants."

(6) That on August 30, 1947 (11 days after August 19, 1947), appellants were not willing to purchase the property under the terms specified in the receipt (Pls.' Exhibit 1). Hence appellants' claim that they have "constantly sought to settle for the property without cooperation from defendants" is false.

When appellants filed their complaint for damages and then made their pretrial statements they had in their possession plaintiffs' Exhibits 1 to 5 and 9, and carbon copies of plaintiffs' Exhibits 6 and 7. Hence there can be no explanation for the brazen misstatements of fact except unscrupulous conduct.

After many years of litigation the case was called for trial on May 14, 1957.

After evaluation of the testimony of the appellants and all evidence adduced by them in open court, the trial Judge (Appellants' App. 4A) stated:

> "I find there was a breach by plaintiffs of the informal contract of purchase and sale in their refusal to be bound by the terms of the original agreement and their refusal to sign a formal agreement conforming thereto. No document has been signed by the plaintiffs except their own draft of formal agreement, which does not comply with the original informal memorandum of the contract of the parties and was therefore rejected by the defendants.
>
> "If it be held that the agreement of the parties as to financing of the purchase must be determined in the light of plaintiffs' Exhibits 1, 2, and 3, and that the specific financing provision of Exhibit 1, which provides for a deed of trust, is to be given no more weight than the references to the 'mortgage' in Exhibits 2 and 3, I then hold that there is an ambiguity in the written memorandum of the agreement and that there was no meeting of minds between the parties on this provision and no contract.
>
> "The ambiguity and misunderstanding are not resolved by plaintiff's Exhibit 4, defendants' letter of August 12, 1947, offering to sell the property to plaintiffs with the unpaid balance financed by a mortgage, for the reason that the terms of this preliminary offer were not accepted by plaintiffs. Defendants there proposed a sale for $12,300, with a payment of $3,000 cash and a 20-year mortgage at 4.5% interest, while plaintiffs' Exhibit 1 provides for a total sale price of $11,800, with a cash payment of $2,500 and a 20-year deed of trust at 4% interest.
>
> "I must therefore grant defendant's motion for judgment, made at the close of plaintiffs' case."

From this judgment the appellants filed the appeal under consideration.

SUMMARY OF ARGUMENT

The trial Judge heard the testimony of both appellants, saw them testify, and examined all exhibits presented by them before he rendered his judgment. For this reason, the judgment should not be disturbed by appellate review unless a mistake of judgment is clearly apparent, which the facts of record in this case fail to establish. The trial Court did not err in awarding judgment to appellees at the close of appellants' case for two reasons: (1) that whatever contractual rights appellants had under the informal agreement (Appellees' App. 1) of August 19, 1947, were voided by them when on August 30, 1947, said appellants refused in writing (Appellees' App. 6) to be bound by the terms of said informal agreement, and (2) that if the informal agreement of August 19, 1947, must be construed to include both a deed of trust and a mortgage as a means of financing the unpaid balance of the purchase price, or to include the additional benefits sought by appellants in their version of formal contract, then the informal agreement of August 19, 1947, was ambiguous and there was no meeting of minds on material provisions thereof and no contract.

Appellees had certain contractual obligations that arose from the acceptance of the $100 deposit and the receipt given to appellants. These obligations did not extend beyond the provisions of the informal agreement evidenced by Exhibit 1, or by Exhibits 1, 2, and 3 (Appellees' App. 1, 2, 3). To meet these obligations appellees had their attorney prepare a draft of a formal sales contract (Appellees' App. 10) as had been agreed by the parties. Appellants refused to be bound by a deed of trust and rejected the said formal sales contract (Appellees' App. 6).

Any contractual obligations appellees had were voided when appellants refused to be bound by the basic terms of the informal agreement of August 19, 1947, and tried to force appellees to accept their version of a formal contract signed by them August 30, 1947 (Appellees' App. 7).

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Any contractual obligations appellees had were voided when appellants refused to be bound by the basic terms of the informal agreement of August 19, 1947, and tried to force appellees to accept their version of a formal contract signed by them August 30, 1947 (Appellees' App. 7).

Appellants have failed to show any errors in the District Court's findings of fact or conclusions of law that could possibly alter the decision of the trial Judge; hence the judgment should be affirmed.

ARGUMENT

I.

Burden of Proof on Appellants

Judgment in the District Court of the District of Columbia was rendered in appellees' favor at the close of appellants' case. The proceedings and testimony were taken down by a court reporter, but no Reporter's Transcript appears in the Record on Appeal. Inasmuch as the trial Judge had at his disposal all of the facts concerning appellants' complaint, including the opportunity to observe the two appellants as witnesses when they appeared before him, the findings of the trial Judge should not be set aside in the absence of a complete record unless the findings are clearly erroneous and lead to injustice. Fed. Rules Civ. Proc. rule 52, page 59, 28 U.S.C.A. See: Gary Theatre Co. v. Columbia Pictures Corporation, C.C.A. Ill. 1941, 120 F.2d 891; Howard v. Chicago B. & Q. R. Co., C.C.A. Neb. 1945, 146 F.2d 316.

II.

Discussion of Appellants' Questions

The "questions presented" by appellants are directed to the duties of parties who sign a formal contract. Appellees maintain that agreement of the parties on terms is a necessary prerequisite for a formal contract. Without agreement, the question of signing becomes moot. In the present instance, appellants on August 30, 1947, refused to be bound by the terms of the receipt (Appellees' App. 1) and hence the question of who should sign a formal contract first and the relative duties of "vendors and vendees" with reference to the signing of a formal contract are of no importance. The fact that appellants refused to accept the draft of formal contract (Appellees' App. 10) prepared by appellees' attorney is evidence that appellants rejected the offer made

by appellees and that appellees sought in vain to complete their part of the bargain.

On August 19, 1947, appellees accepted appellants' deposit of $100 on the condition that a formal contract in accord with the provisions of the receipt was to be prepared by appellees' attorney and signed by all of the parties as soon as possible. Appellees believed at that time that there was a meeting of the minds between them and appellants, but it developed later that appellants were not willing to adhere to the terms set out in plaintiffs' Exhibit 1, or even in Exhibits 1, 2, and 3. The receipt (Exhibit 1) was binding on the appellees because they both signed it. Appellants did not sign any paper and appellees could not force appellants to agree to be bound by a deed of trust or to accept the provisions of the receipt, or the receipt and the informal notes of August 19, 1947. Insofar as the judgment of the District Court is concerned, it is immaterial whether there was no contract on August 19, 1947 for lack of a meeting of minds, or whether there was a contract and it was broken by appellants on August 30, 1947 by their refusal to be bound by the terms thereof. In either case, appellants had no right to relief.

III.

Rebuttal of Appellants' Points

Point 1. Appellants claim in Point 1 that "The Court erred, however in finding that appellants had breached this contract by refusing to sign a subsequent formal contract." Appellees cannot find in the Record on Appeal any conclusion of law that states ". . . . appellants had breached this contract by (merely) refusing to sign a subsequent formal contract." [(merely) supplied.] Possibly appellants refer to the conclusion of law that states: "6. There was a breach of the informal contract of purchase and sale by the plaintiffs when they refused to be bound by the terms of that agreement and refused to sign a formal contract conforming thereto." [Italics supplied.] (Appellants' App. 5C.) The heart of this conclusion is that plaintiffs refused to be

bound by the terms of the agreement. If so, appellants' citation of a portion of the conclusion of law is not only incorrect but misleading. The trial Judge arrived at his decision after hearing the testimony and examining appellants' exhibits including the letter of August 30, 1947, and appellants' draft of formal contract (Appellees' App. 7). There is no doubt but that appellants on August 30, 1947 refused to be bound by the terms of the receipt (Pls.' Exhibit 1). Hence the conclusion of law is correct.

Point 2. Appellants' Point 2 reads:

> "The United States District Court erred in finding that the formal contract was in conformity with the original enforceable contract of August 19, 1947. This formal contract incorporated a provision foreign to the previously expressed intentions of the parties; it solicited an offer from the appellants and granted to the appellees an election to which they were not entitled under the terms of the original executed contract."

Appellees contradict all of appellants' claims of error in this point. Appellants did not give reference to the specific conclusion of law containing the alleged error. Appellees guess that appellants had reference to the conclusion that reads: "4. The draft of formal contract prepared by defendants' attorney was in conformity with the informal agreement of August 18, 1947." (August 18 corrected to August 19.)

The informal agreement of August 19, 1947 (Exhibit 1), provided: (1) for the sale of property at an agreed price, (2) for the signing of a formal contract, and (3) for the sellers to hold a 20-year amortized first deed of trust. The draft of the formal contract prepared by appellees' attorney conformed with these essential requirements; whereas appellants' version of a formal contract (Exhibit 7) varied the informal agreement in substantial particulars, not only by providing for a mortgage in lieu of a deed of trust, but by introducing modifications not acceptable to appellees with reference to subdivision, cutting of timber, costs and other features.

Preparation of a formal contract based on the informal agreement required that the conventional requirements of a real estate sales contract for the purchase and sale of real estate in this area be met. Some of the conventional provisions lacking in the informal agreement of August 19, 1947, were: (1) a precise description of the property, (2) the kind of deed, (3) the kind of title, (4) a provision of a time of performance, (5) a date of possession, and (6) a statement concerning details of deed of trust--when to start, amount of payments, etc. These items were necessarily included in the proposed formal contract. Appellants object to inclusion in the formal contract of the provision that "the vendees agree to comply with the terms of sale within _____ days from the date of acceptance by owner or the deposit will be forfeited." This is the conventional wording for setting a date of compliance for a real estate contract. The date was left blank so that the parties involved could agree on a suitable time period. A time of performance clause is a necessary part of a formal contract, and hence appellants' objection to this provision is not valid. Furthermore, no objection to this provision was made by appellants prior to their filing their appeal brief. Appellants' objection to the wording of the clause is not sound because the wording used is conventional for real estate sales contracts in the District of Columbia. The "date of acceptance by the owners" in this clause is used as a reference point for measuring time and does not constitute a "provision foreign to the previously expressed intentions of the parties."

No reference to the Record on Appeal is given concerning appellants' claim that appellees formal contract "solicited an offer and granted to the appellees an election to which they were not entitled." Appellees guess that appellants refer to financing by a deed of trust rather than a mortgage. Exhibit 1, the receipt given appellants on August 19, 1947, provides for a deed of trust; this is the basic agreement on which appellants rely. The notes dated August 19, 1947 (Exhibits 2 and 3), signed by only one of the appellees and not by the

appellants, did not alter the specific provision of the receipt (Exhibit 1) that called for a 20-year deed of trust to be held by appellees. The notes are obviously informal and the phrase "curtailment on the mortage" was used by misnomer in the broad sense of a secured indebtedness, and not with any intention of altering the specific requirement of a deed of trust specified in Exhibit 1. Alteration of this requirement would have required the signature of all four of the parties to the original agreement. Thus any contention that the draft of formal contract prepared by appellees' attorney did not conform to the original informal agreement because it elected a deed of trust in lieu of a mortgage, is clearly erroneous.

Point 3. Appellants' Point 3 reads: "The record is devoid of any evidence that the appellees signed the formal contract. The United States District Court for the District of Columbia erred, therefore, in finding that a breach of the original contract resulted only upon the refusal of the appellants to execute it." The Court did not make any such conclusion. The trial Court found that appellants breached the contract when they refused to be bound by the terms of the agreement. On the other hand, appellees did not refuse to be bound by the terms of the original agreement and did not repudiate any part of the basic informal agreement.

Point 4. Appellants' Point 4 states: "The formal contract was drafted by the appellees. The District Court erred in failing to construe this contract, and the provisions therein, in a light more favorable to the appellants who assumed no responsibility for the drafting thereof."

The trial Judge heard the testimony of the two appellants as witnesses and he was able to construe the agreement of the parties and the provisions as understood by appellants in an impartial manner and with justice for all. Furthermore, according to Fed. Rules Civ. Proc. rule 52, page 54, 28 U.S.C.A., "Where the evidence was conflicting, the court of appeals is not permitted to weigh the testimony but must give the appellee the benefit of all the facts that the evidence tends to

prove, and such facts must be taken as true unless clearly wrong."

Point 5. Appellants' Point 5 reads: "The United States District Court for the District of Columbia erred in imposing a duty upon the appellants to execute the formal contract without imposing a similar obligation upon the appellees."

The United States District Court did not impose a duty upon the appellants to execute a formal contract. Appellees' attorney prepared a draft of a formal contract in accordance with the informal agreement and sought to obtain acceptance by appellants. Thus, appellees gave appellants the opportunity to accept a formal contract in conformity with the informal agreement of August 19, 1947. Appellants were not willing to be bound by the terms of the agreement and hence whether or not appellees had signed their draft of formal contract prior to submitting it to appellants is moot.

Point 6. Appellants' Point 6 implies that the United States District Court held that the signing of a formal contract was essential to the existence of an enforceable contract." This implication is wrong. The trial Judge stated in his memorandum (made a part of the findings of fact by reference, Appellants' App. 4A): "I find there was a breach by plaintiffs of the informal contract of purchase and sale in their refusal to be bound by the terms of the original agreement and their refusal to sign a formal agreement conforming thereto. No document has been signed by the plaintiffs except their own draft of formal agreement, which does not comply with the original informal memorandum of the contract of the parties and was therefore rejected by the defendants."

The quotation shows that the decision is based primarily on the refusal of appellants to be bound by the terms of the informal agreement made by the parties on August 19, 1947, and the express terms of such agreement written down in the receipt (Exhibit 1). Such a holding is not inherently inconsistent with the general law applicable to real estate contracts. No references or authorities were cited by appellants

to substantiate their view. The findings of the Court are clearly supported by appellants' letter of August 30, 1947 (Exhibit 6)(Appellees' App. 6), and the accompanying draft of formal contract signed by appellants on August 30, 1947 (Exhibit 7)(Appellees' App. 7). In their letter of August 30, 1947, appellants stated in no uncertain terms that they were not willing to be bound by the requirements of a deed of trust and enclosed a proposed draft of a "Formal Sales Contract" (Exhibit 7)(Appellees' App. 7), presenting what they considered the agreement of August 19, 1947, to be. The letter and the enclosure prove that appellants repudiated the terms of Exhibit 1. Appellees contend, in accord with the decision of the trial Judge that if the agreement of the parties as to the financing of the balance unpaid of the purchase money must be determined by plaintiffs' Exhibits 2 and 3 and that the specific financing provision of Exhibit 1 providing for a 20-year amortized first deed of trust is to be given no more weight than the references by misnomer to mortgage in appellants' Exhibits 2 and 3 (Appellees' App. 2, 3), then there was no meeting of the minds between the four parties on a material provision and no contract.

Insofar as the judgment is concerned, however, it is immaterial whether the original informal agreement was a contract that was broken by appellants, or whether there was no meeting of the minds on August 19, 1947, and hence no contract. In either event, the judgment of the District Court is not erroneous and should be affirmed.

CONCLUSION

The record on this case clearly supports the findings of fact and conclusions of law of the District Court for the District of Columbia entered May 29, 1957, and in the absence of a clear showing that any error has been made it is respectfully submitted that the judgment

of the District Court for the District of Columbia should be affirmed.

Respectfully submitted,

/s/ Horace S. Isbell
/s/ May D. Isbell

4704 Blagden Avenue, N. W.
Washington 11, D. C.

Appellees, pro se.

CERTIFICATE OF MAILING

I certify that on this 15th day of March, 1958, I mailed, postage prepaid, a copy of the foregoing typewritten brief for appellees to Ellsworth T. Simpson, 917 - 15th Street, N. W., Washington 5, D. C., attorney for appellants.

/s/ Horace S. Isbell

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APPELLEES' APPENDIX

pl's. Ex. 1
[Filed May 15, 1957]

507 Da Ce Rd. N.W.
Washington D C
August 19 '1947

& Mary Madeline DeLeray

Received of Joseph L. DeLeray the
sum of One Hundred Dollars
deposit on the purchase of
the Todd's Tavern Tract, Spotsylvania
County, Virginia comprising 495
acres more or less said deposit
to be applied on the cash payment
of $2500 dollars and said property
to be sold for the total sum
of $11,800 with formal contract
signed as soon as possible. The
sellers agree to hold a first trust
on said property of $9300 at 4%
with monthly instalments covering
principal and interest, said trust
to run for twenty years.

Horace S. Isbell

May D. Isbell

18 (1)

Pl's. Ex. 2

Filed May 15, 1957

In the event that the party of the second part wishes to subdivide the tract, the party of the first part agrees to release the mortgage on any portion of the tract which may be sold to ~~(at a price not less than~~ a third party ~~)~~ provided that the mortgage is curtailed ~~by~~ (over and above the regular monthly curtailments) by an amount corresponding to the fraction of the selling price of the portion sold to the third party equal to the unpaid balance of the mortgage at the time of the release divided by 11.80 ~~cents~~ to be borne by the party of the second part

In case wood or timber is cut in any calender year in excess of 50,000 board feet or 50 cords of wood, exclusive of fallen timber, 1/3 of the selling price of the lumber, or wood is to be applied as a curtailment on the mortgage in addition to regular monthly curtailments.

Signed H. S. Isbell

Aug 19, 1947

Taxes, and insurance to be adjusted to date of settlement

20 [Filed May 15, 1957] Pl's. Ex. 4 for Id.

Washington D. C.

August 12, 1957

Mr. T. L. De Levay,
211 6th St. S. E.
Washington D. C.

Dear Mr. De Levay:

I inclose a typed description of my property in Spotsylvania County Virginia. If you will call me at Adams 8088, after 6, I shall be glad to give you more details and to arrange an interview.

With reference to the down payment, if you should desire to purchase the property I would be willing to accept $ 3000 in cash and to carry the balance, of $9,300 on a twenty-year monthly amortized mortgage at 4.5 percent interest. The sale price of the property to be $12,300 without electrical wiring or $12,500 with wiring installed.

Yours very truly,

/s/ Horace S. Isbell

1507 Park Road
Washington D. C.

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21 [Filed May 15, 1957] Pl's Ex. 5 for Id.

Owner H. S. Isbell 1507 Park Road Washington D. C.
Phone Adams 8088

Location and general description: The property is known as Todds Tavern and is located in Spotsvania County Virginia, i3 mikes west of Fredericksburg, 4 miles north of Spotsylvania Court House, at the intersection of the battlefield highway (route 210) and route 612.

The farm consists of approximately 495 acres. 45 under cultivation balance in good timber. It has an eight room house, a bank barn 32 X 42 of stone and wood. The house is in poor repair but could be improved at relatively low cost. If desired, electric wiring will be include - otherwise an allowance of $200 will be made. Electricity is available. The soil is good, free from stones, swamps and other objectionable features.

Timber: There is upwards of 500,000 feet of saw timber ripe for cutting. This consists of pine suitable for framing lumber, oak suitable for the production of railroad ties and flooring and popular, gum, hickory and maple suitable boards or other use. The logging operation is exceptionally simple because the property is traversed by highways with a frontage of 2.77 miles on improved roads.

Building sites and suitability for subdivision: On account of the exceptionally long frontage on hard surfaced roads and the location at a natural communications center the property is suitable for subdivision and commercial development.

Community, Schools and Transportation: The property is located in a friendly community which is developing rapidly. The women of the community have an association which owns and maintains a community house, located on a lot originally part of the Todds Tavern Tract and surrounded on all sides by the property. The county maintains a consolidated school and provides free transportation for the children. A bus line maintained by the "Sylvania Plant" runs from the property to the "Sylvania Plant" in Fredericksburg. The distance to Fredericksburg is short and many people work there. The taxes are low $56 per year. The assessment ($3780) is low as it has not been increased since 1930. Since that time the timber has grown in value and the community has developed.

Historic value: Todds Tavern is a natural stopping point between the Wilderness and Spotsylvania battlefields - regions which are being developed as National Parks. Breastworks constructed during the Civil War are still present and occasionally relics of the great conflict are found.

To reach the farm: Take highway #1 to Fredericksburg; turn west on # 3 proceed about 5 miles to a point where a filling station is on the right and a macadam road bears off slightly to the left. Continue on the macadam road about 8 miles to the intersection with highway #210.

The house is located at this intersection. It is readily recognized by the presence of an old well in the center of the intersection. There are several roads which branch of the macadam road but there are signs which read Todds Tavern so it is not difficult to follow the course. Mr. B. L. Haney who resides on the property will be glad to show you the place. If you wish you can return by way of Spotsylvania Court House at only slightly higher milage.

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22 [Filed May 15, 1957] Pl's Ex. 6 for Id.

Washington, D. C. August 30, 1947.
211 - 6th Street S. E.

Mr. and Mrs. Horace S. Isbell,
1507 Park Road,
Washington, D. C.

Referring to your letter (with enclosure) dated August 12, 1947, and to our personal negotiation on August 19th resulting in an agreement acknowledged by our $100.00 down payment and your receipt, with corresponding notes dated same, we enclose a signed formal contract as you desired in the course of our telephone conversation this morning.

We were induced to prepare this formal contract, because the draft of your lawyer, Mr. Quimby, does not comply with our personal agreement.

We stand firm on our agreement and are willing to fulfil it to 100%, but are not willing to undertake any new restrictions, terms, modifications or alterations especially your newly conceived requirement of a deed of trust instead of the agreed first mortgage, except if the proper judicial authorities would compell us to do so on the base of your referred letter and receipt with their enclosures (latters dated August 19th) following the agreement.

In principle we are not against any other kind of assurance of the balance, but the state of willful negligence or default of the monthly payments should be determined and declared either by a juducial

authority or such two or four impartial persons or institution in which both parties have full confidece (so, not the lawyers or employees of either party).

Please, let us know when will you be prepared to give the property into our possession (if possible before September 20) with the deed suitable for recording in exchange of our mortgage and the rest of the agreed cash down payment.

Yours truly,
/s/ J. L. DeLevay

1 enclosure
Registered,
Special Delivery.

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23 [Filed May 15, 1957] Pl's Ex. 7 for Id.

FORMAL
SALES CONTRACT

between HORACE S. ISBELL and MAY D. ISBELL (as Vendors) and JOSEPH LADISLAS DE LEVAY and MARIE MADELEINE DE LEVAY (as vendees) agreed on August 19, 1947, 1507 Park Rd. Apt. 2 Washington, D.C. concerning the sale and purchase of the real property known as TODD'S TAVERN lying in the County of Spotsylvania, State of Virginia as described below,

WITNESSETH: That for and in consideration of the sum of Eleven Thousand Eight Hundred ($11,800.00) Dollars, the Vendors agreed to sell and the Vendees agreed to buy the certain tracts of land, parcells, lots, woods, house and farm buildings (as stated in the detailed description of the property attached to the letter dated Aug. 12, 1947 and enclosed herewith) lying in Chancellor District, Spotsylvania County, Virginia, containing four hundred seventy-three (473) acres more or less owned by the Vendors and known as "Todd's Tavern" Tract or Finchville, being the same tract of land conveyed to the Vendors by deed from Alice Finlay Coles; and another certain tract and parcel of land being in said Spotsylvania County, Virginia and containing

twenty-one and three-quarters (21-3/4) acres more or less, being a portion of the Catherine Furnace Tract, lying on the west side of the Broch Road, corner to the Finchville Tract, and being the same land which the Vendors obtained by deed dated April 7, 1934 from P. B. Willis and J. M. Willis Trustees.

It is understood that the certain two acres of land with its improvements thereon, known as "School Lot" exempted, being this certain land conveyed previously by Mary A. Harvey to Louisa A. Davidson by deed dated September 3, 1914.

The terms of payment shall be Twenty-five Hundred Doll. ($2,500.00) in cash at the time of settlement (recording and possession) included the One Hundred ($100.00) Dollars already paid as part-payment on the day of the agreement. The balance to be secured by a first morgage on all of said property, an amount of Ninety-three Hundred D. ($9,300.00) with interest at four (4) percent payable in monthly instalments of Fifty-four ($54.00) Dollars, including interest, said monthly payments to be applied first to the payment of interest and the balance thereof to the unpaid principal, it being the intent of the parties hereto that the whole principal sum and interest of said amount shall be paid on or before the expiration of twenty (20) years from the date of the first monthly payment. The first monthly payment is due betweeen the first and fifth day of the month following a thirty (30) day period of time, beginning at the date of the final settlement (recording and possession).

The Vendors agree that on request will execute all necessary releases from the mortgage on any parcel (especially in case of intended subdivision) if the monthly payments have already accumulated to a considerable amount or if a certain amount has been paid above the monthly instalments. This release or releases however must not exceed the present proportion of security (not less than twenty-five (25) percent plus) of the remaining balance.

24 It is further agreed between the parties that in every calendar year an amount of equivalent to fifty thousand (50,000) board feet or

fifty cords of wood or timber can be cut yearly or in accumulated amount in a later time. The fallen timber and the necessity of the household of the Vendees are excluded from the yearly amount. In case Vendees desire to cut and sell further quantities wood or timber, one-third of the selling price should be applied as curtailment on the mortgage or Vendees should give equivalent security.

The Vendors agree to convey the above property with General Warranty Deed, with good title and assurance of quiet possession free from all encumbrances and transfer into possession on or before September 20, 1947, with the understanding that the property, especially the wood and the buildings must be in the same state and condition as they were at the time of inspection (August 16, 1947). The Vendees acknowledge the right of the former tenant B. T. Haney to enter in and upon the property for the purpose of removing his crops planted on the property up to and including November 15, 1947.

In connection with recording the title (examinations, conveyancing, notary fees, revenue stamps and similar) all expenses or charges are to be at the cost of the Vendees. In connection with recording of the morgage all expenses or charges including Vendors' lawyers or other representative or employee, are to be at the cost of the Vendors.

All taxes, insurance, rents and interest are to be adjusted at the time of transfer into posession.

Any difference of interpretation of the agreement should be settled by that authority, who, by law, has jurisdiction over the territory where the property is located.

Witness the following signatures and seals this Day of August 30, 1947, Washington, D. C.

Enclosures.

. . . . . .(Seal)

. . . . . .(Seal)

/s/ Joseph Ladislas DeLevay . . . . . .(Seal)

/s/ Marie Madeleine DeLevay . . . . . .(Seal)

27 [Filed May 15, 1947] Pl's. Ex. 9

SALES CONTRACT

THIS AGREEMENT of Sale made in triplicate this _____ day of _____, 1947, between JOSEPH LADISLAS DeLEVAY and MARIE MADELEINE DeLEVAY (hereinafter known as the Vendees), and HORACE S. ISBELL and MAY D. ISBELL (hereinafter known as the Vendors),

WITNESSETH: That for and in consideration of the sum of Eleven Thousand Eight Hundred ($11,800.00) Dollars, the Vendees agree to buy and the Vendors agree to sell the certain pieces, parcels, or lots of land described as follows, to wit: A tract of land in Chancellor District, Spotsylvania County, Virginia, containing four hundred seventy-three (473) acres more or less, and now owned by the Vendors, which land is sometimes known as "Todd's Tavern Tract or Finchville", being the same tract of land conveyed to the Vendors by deed from Alice Finlay Coles; and another certain tract and parcel of land being in said Spotsylvania County, Virginia, and containing twenty-three and three-quarters (23-3/4) acres more or less, being a portion of the Catherine Furnace Tract, lying on the west side of the Brook Road, corner to the Finchville Tract, and being the same land which the Vendors obtained by deed dated April 7, 1934 from B. P. Willis and J. M. H. Willis, Trustees.

It is expressly understood between the parties hereto that it is not the intention of the Vendors to convey, nor of the Vendees to receive, any portion of those certain two acres of land, or any improvements thereon, known as the "School Lot", conveyed by Mary A. Harvey to Louisa A. Davidson by deed dated September 3, 1914, and of record in Deed Book 84, page 343 in the office of the Clerk of the Court of Spotsylvania County, Virginia.

The terms of sale shall be One Hundred ($100.00) Dollars deposited with the execution of this agreement, the receipt of which is hereby acknowledged, and a total payment of twenty-five hundred ($2,500.00) Dollars in cash at the time of settlement, as specified

herein, the said One Hundred ($100.00) Dollars being a part of said Twenty-five Hundred ($2,500.00) Dollars cash payment, and the balance to be secured by a first deed of trust on all of said property, and evidenced by a promissory note in the face amount of Ninety-three Hundred ($9,300.00) Dollars, with interest at four (4) percent, said promissory note being payable in monthly instalments of Fifty-four ($54.00) Dollars, including interest, said monthly payments to be applied first to the payment of interest and the balance thereof to the unpaid principal, it being the intent of the parties hereto that the whole principal sum and interest of said promissory note shall be paid on or before the expiration of twenty (20) years from the date thereof, and, in any event, any portion of said principal and interest remaining unpaid (provided all payments are promptly made) at the expiration of said twenty-year period shall be paid in one lump sum regardless of amount.

The Vendors agree that in the event the Vendees wish to subdivide the property intended to be conveyed that the Vendors will execute all necessary releases under the trust on any portion of the tracts which may be sold to a third party at a price agreeable to the Vendors and Vendees herein, provided the balance of the purchase price due under the trust at the time of the execution of such release is curtailed (over and above the regular monthly curtailment) by an amount corresponding to the selling price of the portion to be released times the ratio of the unpaid balance of the original trust to the original sales price of all property intended to be conveyed; that all costs incident to the obtaining of such releases shall be borne by the Vendees.

It is further agreed between the parties hereto that in case wood or timber is cut in any calendar year during the existence of the trust in excess of an amount equivalent to fifty thousand (50,000) board feet or fifty (50) cords of wood, exclusive of fallen timber, one-third of the selling price of the sawed lumber or cut wood is to be applied as a curtailment on the trust in addition to the regular monthly payments, as aforesaid.

The Vendors agree to convey the above property with a General Warranty Deed. Examination of title, conveyancing, notary fees, revenue stamps and all recording charges, including those for purchase
29 money trust, if any, are to be at the cost of the Vendees.

The trustees under the deed of trust mentioned herein are to be Elmer E. Cummins and Charles H. Quimby, 1126 Earle Building, Washington, D. C.

All taxes, insurance, rents, and interest are to be adjusted at the time of closing.

The Vendees agree to comply with the terms of sale within ____ days from the date of acceptance by owner or the deposit will be forfeited.

It is understood that the title is to be good of record or no sale. However, a reasonable time shall be allowed the Vendors to correct any defects reported by the title examiner.

It is understood that the property is to be conveyed subject to any restrictions now thereon.

The Vendors agree to take prompt steps to notify the present tenant to vacate the property on or before September 20, 1947, it being expressly understood by all of the parties hereto that said tenant, one B. T. Haney shall have the right thereafter to enter in and upon said property, for the purpose of removing any crops heretofore planted on said land, up to and including November 15, 1947.

WITNESS the following signatures and seals this _____ day of _____, 1947.

_____ (Seal)
_____ (Seal)
_____ (Seal)
_____ (Seal)

_____